IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2119 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJ BHIMAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2119 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

ME SAMEER DAVE AGP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/05/2002

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 28/12/2001 passed by the Police Commissioner, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. In this matter, this Court (Coram : A.L. Dave, J.) has issued rule vide order dtd.12/2/2002 and process of the rule was issued to the respondent NO.2 Commissioner of Police, Rajkot, but name of respondent No.2 has been corrected and accordingly, the process of rule has been served upon the Commissioner of Police, Ahmedabad City, but it appears that the amendment to that effect has not been carried out by the petitioner in the cause title of the petition. Today, learned counsel for the petitioner seeks permission to amend the name of respondent NO.2. Mr.Sameer Dave, learned AGP has no objection. As the rule has been served upon the detaining authority - Commissioner of Police, Ahmedabad City, permission to amend the name of respondent No.2 as Commissioner of Police, Ahmedabad City instead of Commissioner of Police, Rajkot is hereby granted.

4. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the two offences registered against the detenu under Indian Penal Code and Bombay Police Act. The learned advocate for the petitioner has further submitted that on the date of passing detention order, the petitioner was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In support of her arguments, she has drawn my attention towards the grounds of detention. In this connection, she has also drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through

Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

5. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

6. The petition is allowed. The impugned order of detention dated 28/12/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Manoj Bhimaji Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik